

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF VIRGINIA  
3 ROANOKE DIVISION  
4

5 COREY E. JOHNSON,

6 Plaintiff,

7 v.

Civil Action File No.

8 CANINE OFFICER MCCOWAN, WARDEN

7:20-cv-00582

9 JEFFREY KISER, CANINE SERGEANT

10 STANLEY, COMMONWEALTH OF

11 VIRGINIA by and through the

12 Virginia Department of

13 Corrections, HAROLD W. CLARKE,

14 in his individual capacity and

15 official capacity as Director

16 of the Virginia Department of

17 Corrections, WILLIAM BARBETTO,

18 in his individual capacity and

19 official capacity as Statewide

20 Canine Program Coordinator

21 for the Virginia Department

22 of Corrections, A. DAVID

1 ROBINSON, in his individual  
2 capacity and official capacity  
3 as Chief of Corrections  
4 Operations for the Virginia  
5 Department of Corrections,  
6 and JOHN DOES 1-4,  
7 Defendants.

8 -----  
9 VIDEOCONFERENCE DEPOSITION OF  
10 CANINE OFFICER BRIAN MCCOWAN

11 DATE: Wednesday, June 8, 2022  
12 TIME: 9:19 a.m.  
13 LOCATION: Remote Proceeding  
14 Washington, DC 20005  
15 REPORTED BY: Janel Folsom, Notary Public  
16 JOB NO.: 5267183  
17  
18  
19  
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21  
22

1 on duty as a patrol canine handler?

2 A Yes.

3 Q And were you on duty at Red Onion State  
4 Prison?

5 A Yes.

6 Q Okay. Can you, as you sit here today, walk  
7 me through everything you remember and recall from how  
8 you became aware of Mr. Johnson and through this  
9 incident?

10 A I was unaware of Mr. Johnson up until the  
11 point of the incident.

12 Q Okay. So what do you recall about May 2nd  
13 before you met Mr. Johnson?

14 A Just a normal working day.

15 Q Okay.

16 A Nothing particular that stands out.

17 Q Okay. And at some point, you got a call to  
18 respond to an event. Is that correct?

19 A Yes.

20 Q Okay. Starting from when you received the  
21 call, can you walk me through as best as you can  
22 recall it everything that happened from the moment you

1       were informed that there was an incident that required  
2       your response?

3           A       I was monitoring a -- let's see. May the  
4       2nd, 2020, I was monitoring for any movement on Bravo  
5       yard. So I was on the opposite end of where the fight  
6       was. I'm not sure who called the fight.

7           It was either the booth officer or the floor  
8       officer, it could have been either one. They called  
9       the fight. I responded. Arrived probably within, I  
10      would say, 30 seconds of the call within the pod.

11          Q       Okay. What happened next?

12          A       As I was entering the pod -- let's see.  
13      First slider or the second -- I got through the second  
14      slider on the inside and witnessed Mr. Johnson and an  
15      officer in close proximity with each other, and it  
16      appeared as if Johnson was going towards that officer  
17      in a threatening manner.

18          Q       Okay. What else do you recall?

19          A       I then began giving Mr. Johnson warnings --  
20      oral orders. "State canine. Get on the ground or I  
21      will release the dog." And he received -- not only  
22      did he receive those from myself but Canine Officer

1 Baker as well. Baker was the first to respond to the  
2 incident.

3 Q Okay. What happened next?

4 A After I gave the three warnings to Mr.  
5 Johnson, he refused to comply with those orders and  
6 began to run towards another group of inmates that was  
7 on the -- let's see. Close to the cells.

8 Let's see. It was in A1, so it would have  
9 been the inmates were laying scattered around the --  
10 around the -- where the cells are located. And he was  
11 running towards those -- in the -- towards those other  
12 individuals.

13 At that point in time, I deployed canine  
14 Shadow striking Mr. Johnson on the right upper-wrist  
15 area right above the wrist. Let's see. I then gave  
16 Mr. Johnson several consecutive -- several consecutive  
17 orders to stop fighting the dog and to let me see  
18 his -- and to show me his left hand.

19 After a few -- after a few -- a few moments  
20 to try to get him to comply, I then bent down to see  
21 if I could -- he -- he wouldn't -- unfortunately, he  
22 never would show me his left hand. So I bent down to

1       see if I could physically see anything in his left  
2       hand.

3               At that point in time, I did not. I then  
4       verbally gave canine Shadow the command to disengage,  
5       and he did so.

6               Q     Is there anything else that you recall?

7               A     Let's see. I then provided additional  
8       security in the pod while Mr. Johnson was taken to  
9       medical, and all other inmates that were in that pod  
10      were frisk search -- frisk searched, and they returned  
11      to their housing assignment.

12              Not only -- I'm sorry. Not only did Mr.  
13      Johnson go to medical but so did the individual he was  
14      in the altercation with.

15              Q     Okay. Is there anything else you recall?

16              A     Let's see. I believe there was a question  
17      about me patting the dog in one of his grievances. I  
18      do recollect -- I do recall patting the dog. And why  
19      that was -- it was to reinforce the verbal call off --  
20      or I'm sorry. The verbal disengagement.

21              That's -- as of right now, that's all I  
22      recall. If I can add anything to that I will as you

1 BY MR. JOHNSON:

2 Q Okay. Officer McCowan, so just before we  
3 took a quick break, we were just starting to talk  
4 about -- or you had just kind of given us what you  
5 recall about the incident on May 2nd with Mr. Johnson.  
6 And so I'd like to pick up there and ask you a couple  
7 questions and then we'll take a look at the video that  
8 we have pulled up, which is Defense Exhibit 9.

9 So I believe you testified earlier that you  
10 were the second canine officer to respond to the  
11 incident with Mr. Johnson and that Canine Officer  
12 Baker was the first canine officer to respond on May  
13 2nd to the incident with Mr. Johnson. Is that  
14 correct?

15 A Yes.

16 Q Okay. When you came into Alpha Pod A1, what  
17 was the first thing that you saw?

18 A Mr. Johnson approaching the officer who had  
19 gotten involved --

20 Q And is that Officer --

21 A -- in that altercation.

22 Q In the altercation. Okay. Is that Officer

1 Mullins or is that Officer Baker?

2 A Mull.

3 Q Officer Mullins?

4 A Yes, sir.

5 Q Okay. So upon entering the A1 alpha pod,  
6 the very first thing that you saw was Mr. Johnson  
7 approaching Officer Mullins. Is that correct?

8 A That's best recollection. Yes, sir.

9 Q Okay. And I believe you also testified that  
10 you know, or you heard, that Officer Baker also gave  
11 an order to Mr. Johnson that he had not complied with.  
12 Is that correct?

13 A Both inmates that were involved in that  
14 altercation, but Canine Officer Baker gave the same  
15 warnings that I did.

16 Q Understood. Did you hear Officer Baker give  
17 Mr. Johnson the verbal warnings?

18 A No, sir. No. I was not in the pod at that  
19 time.

20 Q So how did you know when you came into the  
21 pod that verbal warnings had been given to Mr. Johnson  
22 by Officer Baker?



1 the dog."

2 They would have said, "Stop fighting. Get  
3 on the ground. Stop fighting. Get on the ground."  
4 Something along those lines.

5 Q Understood. When you first gave your first  
6 warning to Mr. Johnson, can you describe for me where  
7 he was in the A1 pod?

8 A As I was -- I gave my first warning as I was  
9 breaching the threshold of the Alpha 1 slider. As I  
10 was looking for where the incident was, I seen what  
11 was happening. Mr. Johnson was approaching that  
12 officer. I then began -- started giving warnings  
13 right then as I was coming through that threshold of  
14 the door.

15 Q Okay. So you were giving him a verbal  
16 warning to stop fighting. You started giving that  
17 warning before you crossed the threshold into the pod,  
18 and you were giving it as you were crossing the  
19 threshold and coming into the pod. Is that correct?

20 A I was giving -- I began giving that order as  
21 I was crossing the threshold into the pod.

22 Q Understood. And had you made visual contact

1       if they were trying to get my attention or not. I  
2       apologize, sir.

3           Q     Understood. And just to confirm, on the  
4       screens in front of you, is it just the Veritext  
5       application and the Veritext? There's no other sorts  
6       of documents or anything that you're referencing or  
7       looking at from time to time?

8           A     No, sir.

9           Q     Okay. Thank you. The virtual environment,  
10      it's a little bit hard to tell and then --

11          A     I understand.

12          Q     Yeah. So thank you, though. I appreciate  
13      that. And I apologize for having to just verify.

14          A     That's fine.

15          Q     It's a lot easier at times when we're all in  
16      the same room and we can all, you know, transparency  
17      helps.

18                Okay. So I believe my understanding of what  
19      you've just testified to is that you are called to the  
20      Alpha 1 pod to respond to an inmate altercation. And  
21      as you are entering the pod and crossing the threshold  
22      into the pod, you see Officer Mullins being approached

1 in a threatening manner by Mr. Johnson.

2 At which point, you give Mr. Johnson a  
3 verbal command to lie down on the ground or you'll  
4 release your canine. Is that correct?

5 A Multiple verbal commands. Yes.

6 Q Do you recall how many?

7 A No, sir. I would say two to three. Three  
8 would be most -- three yeah.

9 Q Understood.

10 A Yeah. We're going with it. As I recall,  
11 three -- there was three verbal warnings that I gave.

12 Q Okay. And what do you recall was Mr.  
13 Johnson's response, either physical or verbally, to  
14 your warnings?

15 A There was no response.

16 Q Can you describe what you mean by that a  
17 little bit more?

18 A There was no response as far as there was  
19 no -- he physically nor verbally responded to my  
20 orders.

21 Q Understood. So from your perspective, your  
22 orders were just ignored and Mr. Johnson continued to

1 engage in whatever he was engaging in?

2 A Yes.

3 Q Understood. When you say that you entered  
4 the A1 pod and that you observed Mr. Johnson  
5 approaching Officer Mullins in a threatening manner,  
6 what do you recall about Mr. Johnson that made you  
7 believe he was approaching him in a threatening  
8 manner?

9 A Close fisted.

10 Q Okay. Anything else?

11 A Body language was somewhat -- I would say  
12 combative or closed in. It appeared as if that there  
13 was a staff assault about to take place at that point  
14 in time.

15 Q Okay. So I just want to confirm that I  
16 understand what you just said. So you understood that  
17 Mr. Johnson had a closed fist and closed-in body  
18 language that was suggestive to you based on your  
19 training and experience that he was about to engage in  
20 a physical altercation with Officer Mullins  
21 imminently?

22 A It -- it appeared that way. Yes, sir.

1           Q     Understood. Is there anything else besides  
2     the closed fist and the turned-in body language of Mr.  
3     Johnson that led you to believe that he posed an  
4     imminent physical threat to Officer Mullins?

5           A     He was approaching Officer Mullins. Other  
6     than --

7           Q     And when you --

8           A     And other than that no.

9           Q     Other than that, no. Thank you for  
10    clarifying. And by "approach," what do you mean? Do  
11    you mean walking --

12          A     Walking -- walking towards or they were  
13    fairly close, so he was walking towards.

14          Q     So as you were entering the A1 pod, Mr.  
15    Johnson would have been walking toward Officer Mullins  
16    as you're entering, and that's when you're yelling  
17    your commands. Is that correct?

18          A     Yeah. And then --

19          Q     Okay.

20          A     Yes.

21          Q     Oh, please. If there's something, please go  
22    ahead. I didn't mean to.

1           Q     Okay. Did you have any information given to  
2     you over the radio that Mr. Johnson had used a weapon  
3     to attack the other inmate that he was engaged with?

4           A     No.

5           Q     At the time you gave your last command, I  
6     understand that you've testified that you believed  
7     Officer Mullins was at imminent risk of harm from Mr.  
8     Johnson. Was there any other inmates or officers who  
9     you felt were at imminent risk of harm?

10          A     Yes. As I was coming through the door, he  
11     first approached Officer Mullins in a threatening  
12     manner. I began giving warnings. He then turned away  
13     from Officer Mullins and started running towards  
14     another group of inmates that were lying face down  
15     near the cells on the -- if we're looking at it from  
16     the center view, it would have been on the right-hand  
17     side.

18          Q     Okay. As you sit here today or at the time,  
19     did you have an understanding that that group of  
20     individuals that you believe Mr. Johnson was running  
21     towards, did you believe they were in danger from Mr.  
22     Johnson?

1           A     Yes.

2           Q     And why did you believe that?

3           A     He was running towards then with closed  
4     fists, closed-in body language, looked as if he was  
5     ready to fight again.

6           Q     Understood. But it could have been that he  
7     was running away from the other canine that was  
8     attacking the individual who he was in a fight with.  
9     Correct?

10                   MR. DAVIS: Objection. Calls for  
11     speculation.

12     BY MR. JOHNSON:

13           Q     You can answer.

14           A     I do not know.

15           Q     Okay. So after giving your third warning to  
16     Mr. Johnson, prior to making a decision to release  
17     your canine, did you consider not releasing your  
18     canine?

19           A     Yes. I always consider it.

20           Q     Okay. And what were the considerations that  
21     were going through your mind at that time?

22           A     What was the cost of not using force versus

1       the cost of using force.

2           Q     Okay. And can you talk me through, like, I  
3       know it was on the fly, but the calculus you were  
4       making at that time specifically that led you to use  
5       force in this instance?

6           A     Other inmates laying on the ground. Mr.  
7       Johnson was standing, running, being combative. If at  
8       that point he decided to assault another inmate that  
9       was already laying on the ground, he could very easily  
10      crush his skull -- crush the other inmate's skull  
11      before I could have ever done anything about it, and  
12      that would have been something else I would have had  
13      to have answered for.

14                Instead of me explaining why I did  
15      something, I would be explaining why I didn't do  
16      something.

17           Q     Understood. So after you made the  
18      determination that based on what you were observing in  
19      the pod after giving your third verbal warning to Mr.  
20      Johnson, you decided to release your canine at that  
21      time. Is that correct?

22           A     Yes.



1           Q     Okay.  So once you made the decision to  
2     release your canine, what do you recall happened last?

3           A     Canine Shadow struck -- I'm sorry, engaged  
4     inmate -- or Mr. Johnson on the right wrist, right  
5     above the right wrist -- right above the wrist,  
6     stopping said final actions that I was speaking of  
7     earlier.

8           Q     Okay.

9           A     Would you like me to continue to go?

10          Q     Yes, please.  Yes.  Please.

11          A     Mr. Johnson -- I worked my way around at the  
12     table -- a way around the table 'cause he -- the way  
13     that he landed, he was laying very in close proximity  
14     to a table, so I had to work my way around that.

15                 I then gave him multiple orders to stop  
16     fighting the dog and to show me his left hand.  I'm  
17     not sure if he never -- I can't say whether he never  
18     heard me or just ignored it.  Said show it so I could  
19     see his left hand.

20                 I then bent down to see if I could visibly  
21     see anything in his left hand.  I did not.  I then  
22     verbally disengaged canine Shadow.

1           Q     Understood.  Okay.  So I'd like to break  
2     down before we watch the video a little bit about what  
3     you can recall now or just before we watch about the  
4     time in which you first deployed Shadow on Mr. Johnson  
5     and the time that you call or give Shadow the command  
6     to disengage.

7                     Do you have a recollection of what happened  
8     after what happened or where Shadow first engaged with  
9     Mr. Johnson?

10           A     There was only one engagement.

11           Q     Okay.  Can you describe it for me?

12           A     It was on the upper -- I'm sorry, lower  
13     right arm upper -- right above the wrist.

14           Q     Okay.  And what do you recall happening  
15     after Shadow engaged Mr. Johnson on the lower-right  
16     arm?

17           A     Mr. Johnson complied with orders to get on  
18     the ground.  I then worked my way around to take the  
19     dog off at that point and see that he is hiding his  
20     left hand from me.  I then tell him to stop fighting  
21     the dog and to show me his left hand multiple times,  
22     and he refused to do so.

1                   And that's when I physically looked under  
2                   him to see if I could see a weapon or anything that he  
3                   could use to harm me or any other individual in the  
4                   pod. And then I verbally disengaged Canine Shadow.

5                   Q     Understood. So from your perspective, Mr.  
6                   Johnson had not complied with your orders until he was  
7                   on the ground and you were able to look under him to  
8                   verify that there was no weapon on his person or in  
9                   his left hand. Is that correct?

10                  A     He never complied completely. I took it on  
11                  good faith that there was nothing in his left hand at  
12                  that point.

13                  Q     Okay. Are you trained that you are able to  
14                  make subjective determinations about when an inmate is  
15                  complying with an order for purposes of disengaging  
16                  use of force?

17                  A     I'm sorry. Can you repeat the question,  
18                  sir?

19                  Q     Sure.

20                  A     I don't believe I understand what you're  
21                  asking.

22                  Q     Sure. In your training, are you permitted

1        pretty wide latitude to make a judgment call as to  
2        when or what qualifies as complying with an order that  
3        you get?

4            A        Policy sets the standards and then we decide  
5        at what point that policy doesn't necessarily work in  
6        real life because as policy states -- so to gain  
7        compliance, you see that you're supposed to have your  
8        legs crossed, both hands out, complying with all  
9        orders.

10            I subjectively made the decision to take --  
11        to disengage canine Shadow to prevent any further  
12        damage to Mr. Johnson even though he would not show me  
13        his left hand. He was not in 100 percent compliance,  
14        I disengaged canine Shadow regardless because I did  
15        not want to cause any undue damage.

16            Q        Understood. So to just confirm, in terms of  
17        policy, Mr. Johnson never complied with your order.  
18        Notwithstanding, you still called off your canine in  
19        this particular instance?

20            A        Yes.

21            Q        And the reason that you called off your  
22        canine when you did was because you did not want to

1       cause any further injury to Mr. Johnson beyond what  
2       had already -- what he had already sustained up to  
3       that point?

4           A     Yes. That is correct, sir.

5           Q     Thank you. And at the outset of today,  
6       which I know seems like a long time ago, we were  
7       talking about a concept called bite and hold as part  
8       of your training. Do you recall our conversation  
9       around that?

10          A     Yes.

11          Q     Okay. And do you recall testifying that you  
12       were familiar with bite and hold within the  
13       correctional canine training application, but you were  
14       unaware of bark and hold within the correctional  
15       canine setting. Is that correct?

16          A     I am not aware of the bark and hold.

17          Q     Understood. And when you released your  
18       canine on Mr. Johnson, was the canine in bite and hold  
19       mode?

20          A     I don't necessarily think I could call it a  
21       mode.

22          Q     Okay. Would technique be a better -- was

1 taking two steps back at this point. Is that correct?

2 A According to the camera, yes.

3 Q Okay. And have you --

4 A I don't personally recall the details. The  
5 things -- these things happen in a mere matter of  
6 seconds.

7 Q Understood. So at the 1:13 mark, have you  
8 given your third warning yet?

9 A No.

10 Q Okay.

11 A I'd finished my second one.

12 Q Understood. So now, if we click through to  
13 the 1:14 and then pause on 1:14.

14 A Yes, sir.

15 Q Okay. What appears to happen between 1:13  
16 and 1:14 is that you continue to come closer to Mr.  
17 Johnson. Mr. Johnson takes another step back in an  
18 apparent attempt to sidestep Shadow going to what  
19 appears to be engage him on his right side. Is that  
20 correct?

21 MR. DAVIS: Objection to form. You can  
22 answer.

1 THE WITNESS: Yes. It does appear that  
2 way. Yes, sir.

3 BY MR. JOHNSON:

4 Q So as of the 1:14 mark, had you already  
5 deployed Shadow and determined that it was proper to  
6 use force against Mr. Johnson?

7 A Between this deployment and the next, I gave  
8 another warning giving him another opportunity to  
9 comply with orders and to lay on the ground and stop  
10 being a threat. But what was your question, I'm  
11 sorry?

12 Q That's okay. Understood. I appreciate your  
13 response. So it looks like between the 1:13 mark and  
14 the 1:14 mark after you've given your second verbal  
15 warning that you instruct Shadow to engage Mr.  
16 Johnson.

17 And we see that in 1:13 and 1:14 when Shadow  
18 goes to engage Mr. Johnson on the right, and he takes  
19 another step back in what appears to be a side-  
20 stepping maneuver to avoid being bitten by Shadow. Is  
21 that correct

22 A Yes, sir.

1           Q     Okay. And after making the decision to  
2     deploy Shadow and use force, you give Mr. Johnson  
3     another opportunity to comply with the orders, and you  
4     give a third verbal warning to stop or that you will  
5     use force again against Mr. Johnson. Is that right?

6           A     Yes, sir.

7           Q     Okay. So from the 1:14 mark to just play  
8     through 1:15 please.

9                     (Video played.)

10          A     I'm there.

11          Q     I believe what we see here is Mr. Johnson  
12     continuing to take two more steps back both from  
13     Officer Mullins and from yourself. Is that correct?

14          A     Yes.

15          Q     Okay. At this point, when Mr. Johnson has  
16     taken two steps back and you've given another warning  
17     to him to cease engaging, who is in imminent threat of  
18     danger at the 1:15 mark?

19          A     Had I not deployed, he could have -- in the  
20     direction he was going, those six inmates just above  
21     and the two to three that we can see below.

22          Q     Okay. I believe it would appear to be one



1 inmate to Mr. Johnson's right, although his back to  
2 that inmate, about eight or so feet away diagonally to  
3 the right from Mr. Johnson. And then in the bottom-  
4 right corner about maybe 25 to 35 feet away, we see  
5 other inmates lying on the ground.

6 Are those the inmates you're referring to  
7 are in imminent danger from Mr. Johnson at the 1:15  
8 mark?

9 MR. DAVIS: Objection to the form of  
10 the question, but Mr. McCowan, you can answer.

11 THE WITNESS: Yes.

12 BY MR. JOHNSON:

13 Q And the movements that Mr. Johnson has made  
14 up to this point, the 1:15 mark, are these the  
15 movements that you were talking about earlier when you  
16 were describing Mr. Johnson running toward a group of  
17 inmates? Are the movements that we have seen up  
18 through the 1:15 mark those movements?

19 A As I recall them, yes.

20 Q Okay. Are there any other movements up  
21 until this point that you recall that we haven't seen  
22 on this video that led you to believe that Mr. Johnson

1       was running towards or presenting an imminent risk to  
2       other inmates?

3             A       No, sir.

4             Q       And if we could actually -- and I apologize  
5       for the bouncing around on the video. There's not a  
6       better way to do this. If we can start at the 1:13  
7       mark and then we're going to play through to the 1:16.  
8       Or excuse me, 1:17.

9                     (Video played.)

10            A       1:17.

11            Q       Okay. Excuse me. Thank you. So what we  
12       see from the 1:14 to 1:17 mark is Mr. Johnson now  
13       having taken another few steps away from both you and  
14       Officer Mullins. Is that correct?

15            A       Yes.

16            Q       We also see from the 1:15 to the 1:17 that  
17       your canine, Shadow, appears to be barking at Mr.  
18       Johnson, and Mr. Johnson continues to back away from  
19       canine Shadow. Is that correct? Specifically, from  
20       1:15 to 1:16?

21            A       It -- he does not appear to be barking. It  
22       looks as if his mouth is closed.

1           Q     Understood. Okay. Thank you. So at what  
2     point between the 1:13 mark and the 1:17 mark did you  
3     decide for the second time to deploy Shadow on Mr.  
4     Johnson?

5           A     At the one -- between the 1:14 and the 1:15  
6     after giving -- after saying -- after giving him my  
7     warnings twice. "State canine. Get on the ground.  
8     I'll release the dog" twice. He then stepped out of  
9     the way of the deployment and at that point in my  
10    perception I seen that he was -- was attempting to be  
11    a threat to someone else in that immediate area.

12                   At that point in time, I did not know who or  
13    why. But at about 1:15, I would say I make that  
14    decision. Well, make that -- I make the decision to  
15    use force if the third command was not followed.

16           Q     Understood. And that's what we see in the  
17    1:14 and 1:15 even though we can't hear it because the  
18    video is you giving the third command. But then we  
19    obviously, you know, but we can see that, you know,  
20    the deployment around the 1:15, 1:16 mark is the third  
21    deployment of the canine. Is that correct?

22           A     More between 15, 16, to 17.

1 BY MR. JOHNSON:

2 Q Of course. No problem. It appears by the  
3 1:20 mark that Mr. Johnson is completely on the form  
4 on his stomach. Is that correct?

5 A Yes. But where you're -- the -- yes. He is  
6 for the most part on the ground by 1:20.

7 Q Okay. And Shadow is still engaged on Mr.  
8 Johnson's right arm. Is that correct?

9 A Yes.

10 Q Okay. And at this time, what are you saying  
11 to Mr. Johnson?

12 A From -- let's see. From the time the  
13 engagement starts, which is about 16. And he stays on  
14 his -- he's on his feet completely until about 1:19.  
15 And by 1:20, he is on the ground.

16 "Get on the ground. Get on the ground and  
17 stop fighting the dog. Get on the ground."

18 Q All right. Is this when you're looking for  
19 a weapon?

20 A No.

21 Q Okay. Did you believe that Mr. Johnson had  
22 a weapon at this point in time?

1           A     I was unsure at that point.

2           Q     Okay. And if we keep watching the video,  
3           from 1:20 to about 1:29, Shadow is still engaged on  
4           Mr. Johnson. Is that correct?

5                     (Video played.)

6           A     Yes.

7           Q     Okay. So then, the engagement with Mr.  
8           Johnson, just by looking at the video, appears to  
9           start at the 1:16 mark and lasts through the -- it's a  
10          little bit hard to tell, but it's at the 1:34 or 1:35  
11          mark? Or is it longer?

12                    (Video played.)

13          A     I'm sorry. Let's see. 1:40 -- let's see.  
14          1:41. Between 1:41 and 1:42.

15          Q     Understood. So it starts at the 16 and then  
16          goes to the 41, 42?

17          A     Yes.

18          Q     Understood. Okay. And so now that we have  
19          just the parameter, let's go back to the 1:21, 1:22  
20          mark when Mr. Johnson is first brought down to the  
21          ground.

22                    So now that Mr. Johnson is on the ground,

1 and it appears that Shadow has continued to engage  
2 him, what imminent threat are you seeing to continue  
3 to use the canine on Mr. Johnson at the 1:21 mark?

4 A Possibility of a weapon.

5 Q Okay. But again, you didn't have any reason  
6 to believe he had a weapon?

7 A No.

8 Q And playing forward from 1:21 up through  
9 1:46, is the reason that you continued to use force  
10 against Mr. Johnson because you were unsure of whether  
11 he had a weapon?

12 A Yes.

13 Q Is there any other reason --

14 A And that he would not show me his left hand.  
15 I apologize for interrupting.

16 Q Oh, no. I apologize. So could you repeat  
17 your answer?

18 A Yes. I was unsure of whether or not -- the  
19 possibility of the weapon was there, and I was  
20 attempting to get him to show me his left hand so I  
21 could make sure that there was no weapon in his left  
22 hand that he had tucked under his chest at that point.

1           Q     Okay. Given from where Mr. Johnson is at  
2     the 1:21 mark, even if he had a weapon, what's your  
3     understanding of how he could have caused imminent  
4     harm from the position he was in?

5           A     If I were to disengage, and he had a weapon,  
6     I would be stabbed. I would -- he'd jump up if the  
7     dog was not engaged and he had -- and I took him off  
8     while he still had a weapon in his possession, I just  
9     put every -- myself, canine, and every other  
10    individual in that pod back into danger of being  
11    stabbed or any sort of homemade weapon that can be  
12    made. Whether it's a soap in a bar sock -- or a bar  
13    of soap in a sock or a homemade knife.

14          Q     Understood. And is that determination that  
15    you just described, were you trained to -- let me  
16    start over. Sorry. Is your understanding that until  
17    you can verify somebody doesn't have a weapon that you  
18    should treat them as if they do? For purposes of use  
19    of force?

20          A     Can you repeat the question, please? I  
21    apologize.

22          Q     No problem.

1           A     I don't believe I understood you the first  
2     time around.

3           Q     That's not a problem. Let me try to ask it  
4     a clearer way. Is the justification for the use of  
5     force that an inmate may have a knife or a homemade  
6     weapon --

7           A     Yeah.

8           Q     Is that -- is that a reasoning that you are  
9     trained to react with a use of force to if you don't  
10    know that an inmate has a knife or a homemade weapon?

11          A     Not necessarily. We have to go off of what  
12    we know as we are entering a pod where there is an  
13    altercation that has happened. And once we respond,  
14    we have to add what we know to what we are seeing.

15          Q     Understood. So what is it that you saw,  
16    knowing that Mr. Johnson had fought another inmate,  
17    been in close proximity to Officer Mullins, and been  
18    next to the individual who Officer Baker deployed his  
19    canine on, what did you see that led you to believe  
20    that he would pull out a knife on you as compared to  
21    earlier in the altercation?

22          A     That he would not show me his left hand.



1           Q     And that's the same left hand that he had  
2           balled up in a fist when you entered the pod. Is that  
3           correct?

4           A     He had both of them balled into a fist.

5           Q     Got it. And because he kept his left hand  
6           balled in a fist, you believed that he was in fact  
7           carrying a weapon?

8           A     Attempting to hide one, yes.

9           Q     Understood. Even though he had not used  
10          that weapon in the altercation up to that point.

11          A     I was unaware of whether a weapon had or had  
12          not been used in that altercation.

13          Q     Understood. Okay. So I believe that you  
14          said the altercation lasted through the 1:46 mark. Is  
15          that correct?

16          A     1:42.

17          Q     1:42. Okay.

18          A     1:42 to 1:43, I believe, was the mark that  
19          we were looking at.

20          Q     Okay. So if maybe we could go to the 1:40  
21          mark, could you identify for me between, you know,  
22          1:40 and 1:45 where the specific timestamp where you

1 tell or you give the command to Shadow to disengage?

2 A About 1:00 -- I would say somewhere around  
3 1:40 to 1:41 is where I give him the command. You can  
4 see me bent down there giving the command, and I bent  
5 down for -- I -- I bent down earlier to see if I  
6 could -- this is where I said I could -- if I could  
7 see if there was anything in his hand or in his hands  
8 that was balled up in a fist under his chest.

9 I bent down, I couldn't see anything, I  
10 then -- I would say around 1:40 and 1:41, I give the  
11 verbal command to disengage, and 1:43 he disengages  
12 upon his own -- he releases on his own.

13 Q Okay. In your training with Shadow, do you  
14 recall how long it would take Shadow to disengage in  
15 your training after you give a command?

16 A A couple of seconds.

17 Q Okay.

18 A Because it's congruent with what I'm seeing  
19 here.

20 Q Understood. To say that back or just to  
21 confirm, Shadow's release time in response to your  
22 command, as we have seen on this video, is consistent

1 exhibit are all pictures of Mr. Guy's injuries after  
2 the incident with Mr. Johnson. Is that correct?

3 A Yes, sir.

4 Q Okay. And just to confirm, none of the  
5 pictures in Exhibit 14 relate to Mr. Johnson. Is that  
6 correct?

7 A I'm sorry? Can you repeat that, sir?

8 Q Sure. None of the pictures in Exhibit 14  
9 are Mr. Johnson or his clothing. Is that correct?

10 A No, sir.

11 Q Are any of the pictures in Exhibit 14  
12 pictures of Mr. Johnson's wounds?

13 A Yes. Yes, sir. I believe the numbers are  
14 114, 115, 116, 117, and 118 are all of Mr. Johnson.  
15 Numbers 109, 10, 11, 12, 13 are of Mr. Guy.

16 Q Understood. Than you. And you took the  
17 pictures of Mr. Guy. Is that correct?

18 A Yes, sir. I did.

19 Q Do you know who took the pictures of Mr.  
20 Johnson?

21 A Officer Baker.

22 Q Do you know who the individual in 115 who